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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/734,729	12/12/2003	Robert D. Foster	7436-102/10315994	1982
167	7590	09/22/2005	EXAMINER	
FULBRIGHT AND JAWORSKI LLP 555 S. FLOWER STREET, 41ST FLOOR LOS ANGELES, CA 90071			PRASAD, SONAL	
			ART UNIT	PAPER NUMBER
			3763	

DATE MAILED: 09/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/734,729	<b>Applicant(s)</b> FOSTER, ROBERT D.	
	<b>Examiner</b> Sonal Prasad	<b>Art Unit</b> 3763	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 6 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12/12/03</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1,2,3,5,7and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Tsugita et al (US 6,371,969 B1.) Tsugita et al discloses an aortic cannula having a porous flexible material forming an enclosure about the terminus of the aortic cannula, the material provides a substantially greater area through which flow passes than the cross-sectional area of the lumen at the terminus of the cannula. (Fig 3.) Regarding claim 2, Tsugita et al discloses the aortic cannula where the porous flexible material has interstices of sufficient resistance to flow that flow through the porous flexible material is substantially dispersed through the full area of the porous flexible material. (Fig 4A, 4B, 4C) Regarding claim 3, Tsugita et al discloses the aortic cannula having flexible material being knitted wire. (Col 3, Lines 33-35.) Regarding claim 5, Tsugita et al discloses the aortic cannula with knitted wire being made of nitinol wire. (Col 7, Lines 33-34.) Regarding claim 7, Tsugita et al discloses the aortic cannula having an enclosure being made from polymer fabric. (Col 8, Lines 5-15). Regarding claim 8, Tsugita et al discloses an aortic cannula having a porous flexible material forming an enclosure about the terminus of the aortic cannula, the porous flexible material being knitted nitinol wire, the porous flexible material providing a substantially greater area through which

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flow passes than the cross-sectional area of the lumen at the terminus of the cannula and having interstices of sufficient resistance to flow that flow through the porous flexible material is substantially dispersed through the full area of the porous flexible material. (Col 7, Lines 33-34, See Figs 3, 4A, 4B, 4C)

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tsugita et al (US 6,371,969 B1) in view of Rundles (US 3,742,958). The claim differs from Tsugita in disclosing the wire being 16 french. (Col 4, lines 4-5). Rundles discloses the wire as being 16 french which would be the appropriate size for the knitted wire. It would have been obvious at the time of invention to one of ordinary skill in the art to have a 16 french sizing of the wire as disclosed in Tsugita as taught by Rundles to improve the performance of the wire.

5. Claims 6 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tsugita et al (US 6,371,969 B1) in view of Glantz et al. (US 2003/0225434 A1). The claim differs from Tsugita in disclosing the wire being nitinol about .0005 to .005 inches in diameter. Glantz discloses a wire size of .0005 to .005 inches (Page 2, [0029].) It

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would have been obvious at the time of invention to one of ordinary skill in the art to have the nitinol wire sized between .0005 and .005 inches as disclosed in Tsugita as taught by Glantz to improve the performance and fit of the wire inside the aorta.

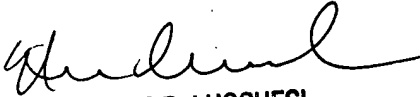
**6. Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sonal Prasad whose telephone number is 571-272-3383. The examiner can normally be reached on M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick Lucchesi can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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